

ORIGINAL TRANSCRIPT

UNITED STATES BANKRUPTCY COURT DISTRICT OF UTAH

CONFIRMATION HEARING

IN RE: EASY STREET
HOLDING, LLC

) Bankruptcy Case No.
) 09-29905
)
) Jointly Administered
) with Cases 09-29907
) and 09-29908
)
) Chapter 11
)
) Honorable R. Kimball
) Mosier
)

June 25, 2010 * 10:04 a.m.

Location: United States Bankruptcy Court
350 South Main Street
Salt Lake City, Utah 84102

Proceedings recorded by electronic sound recording,
transcript produced by certified transcriber/court
reporter: Jennifer E. Garner, RPR
Notary Public in and for the State of Utah

2010 JUL 20 PM 4:52
DISTRICT OF UTAH
BANKRUPTCY COURT
UNITED STATES



CITICOURT

THE REPORTING GROUP

170 South Main Street, Suite 300
Salt Lake City, Utah 84101

PH: 801.532.3441 FAX: 801.532.3414 TOLL FREE: 877.532.3441

191

A P P E A R A N C E S**FOR THE DEBTOR IN POSSESSION:**

Kenneth L. Cannon, II, Esq.
DURHAM JONES & PINEGAR
Attorney at Law
111 E. Broadway
Suite 900
Salt Lake City, Utah 84111
Telephone: 801-415-3000
Facsimile: 801-415-3500

Michael Blumenthal, Esq.
CROWELL & MORING
Attorney at Law
590 Madison Avenue, 20th Floor
New York, New York 10022-2524
Telephone: 212-895-4241
Facsimile: 212-223-4134

FOR WESTLB:

Annette W. Jarvis, Esq.
DORSEY & WHITNEY, LLP
Attorney at Law
136 S. Main Street
Suite 1000
Salt Lake City, Utah 84101
Telephone: 801-933-8933
Facsimile: 801-933-7373

Richard W. Havel, Esq.
SIDLEY AUSTIN
Attorney at Law
555 West Fifth Street
Los Angeles, California 90013
Telephone: 213-896-6000
Facsimile: 213-896-6600

FOR THE UNSECURED CREDITORS:

Lon A. Jenkins, Esq.
Jeffrey W. Shields
JONES, WALDO, HOLBROOK & MCDONOUGH, PC
Attorney at Law
170 S. Main Street
Suite 1500
Salt Lake City, Utah 84101
Telephone: 801-521-3200
Facsimile: 801-328-0537

FOR BAY NORTH:

Adelaide Maudsley, Esq.
CHAPMAN AND CUTLER, LLP
Attorney at Law
One Utah Center
201 S. Main Street
Suite 2000
Salt Lake City, Utah 84111
Telephone: 801-533-0066
Facsimile: 801-533-9595

SPECIAL COUNSEL FOR DEBTOR:

Joseph E. Wrona, Esq.
WRONA LAW FIRM
Attorney at Law
1745 Sidewinder Drive
Park City, Utah 84060
Telephone: 435-649-2525
Facsimile: 435-649-5959

Corbin B. Gordon, Esq.
CORBIN B. GORDON, PC
Attorney at Law
345 West 600 South
Suite 108
Heber City, Utah 84032
Telephone: 435-657-0984
Facsimile: 888-822-8796

FOR DAVID WICKLINE, ALCHEMY VENTURES TRUST, LLC:

Kim R. Wilson, Esq.
SNOW CHRISTENSEN & MARTINEAU
Attorney at Law
10 Exchange Place
11th Floor
Salt Lake City, Utah 84111
Telephone: 801-521-9000
Facsimile: 801-363-0400

FOR PARK CITY I, LLC:

George B. Hofmann, Esq.
Matthew M. Boley, Esq.
PARSONS, KINGHORN, HARRIS, PC
Attorneys at Law
111 East Broadway
11th Floor
Salt Lake City, Utah 84111
Telephone: 801-363-4300
Facsimile: 801-363-4378

FOR GATEWAY CENTER, LLC AND VARIOUS UNIT OWNERS:

Douglas J. Payne, Esq.
FABIAN & CLENDENIN
Attorney at Law
215 S. State Street
Suite 1200
Salt Lake City, Utah 84111-2323
Telephone: 801-531-8900
Facsimile: 801-596-2814

FOR THE UNITED STATES TRUSTEE:

Peter J. Kuhn, Esq.
Attorney at Law
405 South Main Street
Suite 300
Salt Lake City, Utah 84111
Telephone: 801-524-5734
Facsimile: 801-524-5628

FOR JACOBSEN NATIONAL GROUP:

Michael R. Johnson, Esq.
RAY QUINNEY & NEBEKER
Attorney at Law
36 South State Street
Suite 1400
Salt Lake City, Utah 84111
Telephone: 801-532-1500
Facsimile: 801-532-7543

FOR GUNTHERS, INC.:

Jeffrey L. Shields, Esq.
CALLISTER NEBEKER & MCCULLOUGH
Attorney at Law
10 East South Temple
Suite 900
Salt Lake City, Utah 84133
Telephone: 801-530-7300
Facsimile: 801-364-9127

I N D E X

Direct	Cross	Redirect	Recross
--------	-------	----------	---------

Witnesses:

Paul Thronson

Proffer by
Mr. Blumenthal: 51

By Mr. Boley: 56

Duncan Robertson

By Mr. Wilson: 70
114

By Mr. Hofmann: 77
103

William Shoaf

By Mr. Blumenthal 142

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>RECEIVED</u>
1	Addendum to appraisal report_____	51
2	6-16 Amended Plan_____	146
3	Declaration of Richard Kirkham_____	148
4	List of Class 4 Unsecured Trade Creditors_____	149
5	Legal fees 2009-2010_____	153
6	Declaration of Duncan Robertson_____	66
7A	Re-forecast of remaining months of 2010_____	166
7B	Financial forecast 2010-2014_____	166
9	Employment agreement_____	176
10	Articles of Organization for Cloud 9 Resorts-Sky Lodge Management_____	181
11	Articles of Organization for Cloud 9 Resorts-Sky Lodge Development_____	181
12	Consent & Subordination Management Agreement_____	183
13	Consent & Subordination Agreement Cloud 9 SL Development_____	183

P R O C E E D I N G S

THE BAILIFF: Please be seated. This is in the matter of Easy Street Holding, LLC.

THE COURT: Will counsel please note their appearances.

MR. CANNON: Your Honor, Kenneth Cannon of Durham, Jones & Pinegar and Michael Blumenthal of Crowell & Moring appearing on behalf of the Easy Street Partners, debtor in possession, and one of the plan proponents.

MR. BLUMENTHAL: Good morning, your Honor.

MS. JARVIS: Your Honor, Annette Jarvis of Dorsey & Whitney and Rich Havel of Sidley Austin for WestLB, also one of the plan proponents.

MR. JENKINS: Your Honor, Lon Jenkins and Jeffery Shields on behalf of the unsecured creditors committee.

MR. WILSON: Good morning, your Honor. Kim Wilson appearing for David Wickline, a claimant, and Alchemy Ventures Trust, LLC, which has, as a member and manager, lodged an objection on behalf of Cloud 9 Resorts-Sky Lodge Development, LLC and Cloud 9 Resorts-Sky Lodge Management, LLC, claimants.

MR. BOLEY: Your Honor, Matthew Boley of

1 the law firm Parsons, Kinghorn, Harris appearing on
2 behalf of Park City I, LLC, who have objected to the
3 confirmation.

4 MS. MAUDSLEY: Your Honor, Adelaide
5 Maudsley of Chapman and Cutler on behalf of Bay
6 North.

7 MR. KUHN: Peter Kuhn for the United
8 States Trustee.

9 MR. JOHNSON: Good morning, your Honor.
10 Michael Johnson of Ray, Quinney & Nebeker on behalf
11 of Jacobsen National Group.

12 MR. JEFFERY L. SHIELDS: Good morning,
13 your Honor. Jeffery L. Shields -- the other Jeff
14 Shields -- representing Gunthers, Inc., who is a
15 subcontractor to Jacobsen.

16 MR. WRONA: Good morning, your Honor. Joe
17 Wrona, Wrona Law.

18 MR. GORDON: Corbin B. Gordon with Corbin
19 B. Gordon, PC, special counsel for Easy Street
20 Partners.

21 MR. PAYNE: Doug Payne of Fabian and
22 Clendenin on behalf of Gateway Center.

23 THE COURT: Mr. Cannon, there are several
24 matters on the Court's calendar this morning. The
25 way that they've been placed on the Court's calendar

1 has no particular significance. You may take the
2 matters in the order you believe appropriate.

3 MR. CANNON: Your Honor, I think we would
4 propose to proceed with the confirmation.

5 THE COURT: All right.

6 MR. BLUMENTHAL: May I approach, your
7 Honor?

8 THE COURT: You may.

9 MR. BLUMENTHAL: Your Honor, we're here on
10 the hearing to confirm the joint plan proposed by
11 Easy Street Partners and WestLB. To use an
12 expression in a Beatles' song, it's been a long and
13 winding road, but we're here. Easy Street, with
14 Mr. Shoaf at the forefront, has continuously and
15 tenaciously pursued reorganization with the principal
16 goal to pay creditors in full, maintain and maximize
17 the value of the Sky Lodge, keep and preserve jobs
18 for employees, maintain the project for the benefit
19 of its homeowners who already bought units at the Sky
20 Lodge -- 113 homeowners -- and maintain and maximize
21 value for the various constituencies in this case, as
22 well as maintain a -- one of the leading hotels in
23 this community, which will be a benefit to the Park
24 City resort community at large.

25 The plan that was originally filed by Easy

1 Street Partners back in January is -- and compared to
2 the plan that was -- the joint plan that's been
3 recently filed is -- basically the same plan, your
4 Honor, with the major exception that the plan funder
5 is now WestLB, our senior lender, who's also the
6 Class 1 creditor.

7 Mr. Shoaf will testify, your Honor, that
8 he met with over 60 potential plan funders, investors
9 concerning virtually every iteration of an investment
10 to get to confirmation and exit this bankruptcy. He
11 has always maintained transparency with WestLB, the
12 committee, Jacobsen, and all other creditors and
13 constituents in this case who have asked for
14 information.

15 As your Honor is aware, the joint plan
16 that's before you today was filed on June 16th. The
17 treatment of literally all classes, with minor
18 exceptions, but in particular the voting classes are
19 identical. Obviously the treatment of WestLB has
20 changed. However, they've voted in favor of the plan
21 and are the plan proponent.

22 The general unsecured Class 4 creditors
23 have identical treatment. As you'll hear a bit
24 perhaps from Mr. Havel and Mr. Jenkins, there is --
25 there is some issues that they're trying to iron out.

1 The debtor -- in connection with the reply -- I
2 wouldn't call it an objection, but a reply filed by
3 the committee.

4 The Class 2 creditors, which is Jacobsen
5 as well as Gunthers, who has voted in the class,
6 identical treatment. They're taking 1,330,000 to
7 satisfy a claim. There's been a declaration filed by
8 Mr. Kirkham who's the principal of Jacobsen that
9 their actual claim is approximately 1,750,000.
10 They're taking 1,330,000, assuming we confirm here
11 today.

12 With regard to Gunthers, who initially
13 voted not to accept the plan and filed -- I'll call
14 it a limited objection -- they have now agreed to
15 consent to the plan, change their vote to an
16 acceptance and withdraw their objection. Counsel for
17 Gunthers would like to, with Mr. Cannon, who worked
18 this out, announce that on the record at the outset
19 of the hearing so he doesn't need to stay here all
20 day. And I would ask the Court to allow them to do
21 that in a moment.

22 The other secured class, which is a
23 catchall class, Class 3, the only creditor in that
24 class, which is a nonvoting class, is Wells Fargo.
25 There's a financing lease for two vans that's owned

1 by Easy Street Partners. That is not impaired.
2 Payments are current. It's going to be continued to
3 pay -- be paid under the plan.

4 The homeowners who are in Class 5, with
5 respect to them, again, identical treatment as was
6 the case in the original iterations of the plan that
7 started in January and finally filed under the joint
8 plan June 16th where -- when the Jacobs -- I'll call
9 it the Class 2 claims are satisfied, which occurs on
10 the effective date, the liens that were filed are all
11 removed and released and -- and I'll get to a ballot
12 certification in a moment. But every Class 5
13 creditor who voted, voted to accept the plan. In
14 fact, among the classes that have a right to vote,
15 only one creditor holding a \$4,000 claim voted to
16 reject. Everyone else has accepted the plan, your
17 Honor.

18 The Class 7, which is the equity, which is
19 Mezzanine -- Easy Street Mezzanine -- it used to be
20 Class 6. It's now Class 7. However, their
21 treatment, likewise, is identical. Easy Street
22 Mezzanine, although insider votes don't count for
23 purposes of confirmation, actually voted to accept
24 the plan.

25 In any event, being that they're receiving

1 nothing under the plan, and you'll hear testimony
2 that there is no equity at -- beyond -- flow-up
3 beyond Easy Street Partners, they would be deemed to
4 reject the plan, and we'll -- the evidence will
5 reflect that they should be crammed down in any
6 event.

7 The one class that did change was the
8 Class 6, which are the two claims of Cloud 9 Resorts
9 SL Management, LLC and Cloud 9 Resorts Development,
10 LLC. It was never evident that they were going to
11 receive anything. However, under the WestLB
12 sponsored plan, WestLB has the right -- it's been
13 briefed, your Honor. We'll address that during the
14 course of this hearing -- has invoked the
15 subordination agreement which the bankruptcy courts
16 generally enforce. They are receiving nothing and
17 are deemed to reject the plan and really don't have a
18 right to vote in this -- in this case.

19 Before I go on -- that's sort of the
20 summary of the various classes -- I'd like for
21 Gunther's counsel and Mr. Cannon to address the Court
22 with regard to the settlement resolving the Gunther
23 claim.

24 THE COURT: All right.

25 MR. CANNON: Your Honor, this is a -- it's

1 a little bit of a funny issue. Class 2 is classified
2 as Jacobsen. Jacobsen is Jacobsen National Group.
3 Jacobsen was the general contractor on the
4 construction and development of -- construction of
5 the Sky Lodge facility and associated buildings and
6 has a subcontractor. Jacobsen filed a mechanic's
7 lien and Gunther also filed a mechanic's lien.

8 Jacobsen worked out with the
9 subcontractors distribution of the million -- million
10 three-three under the plan that will be distributed
11 to it. It has worked out agreements with all of its
12 subcontractors, including Gunthers, as to what
13 portions of that they will all receive.

14 Gunthers filed an objection basically
15 saying they should have been a part of this class or
16 separately classified; they should have been entitled
17 to vote. Their claim is in there. It's just really
18 under Jacobsen's now, and they've lodged a rejecting
19 ballot.

20 The agreement of the parties is that
21 Gunthers has agreed that if the plan proponents make
22 clear on the record what I'm going to do momentarily,
23 make two things clear on the record, that it would
24 withdraw its objections and either withdraw its
25 negative vote or change its negative vote to an

1 accepting vote.

2 Those two things are, first, that the
3 settlement of these mechanic's lien claims, as set
4 forth in the plan under -- under Class 2 treatment,
5 applies only to this plan and that there is no
6 prejudice to the rights of Gunthers, or for that
7 matter Jacobsen or other subcontractors, if this plan
8 is not confirmed or becomes effective -- or -- or
9 doesn't become effective or they don't get paid;
10 that, in other words, they are waiving no rights
11 other than under this plan. The discounted treatment
12 in this plan applies only to it. All issues are open
13 if this plan does not go forward.

14 The second understanding is that the
15 releases of the mechanic's liens and the claims
16 secured by those liens are not released until they
17 receive a distribution. In other words, it can --
18 it's a contemporaneous exchange. They're paid, they
19 release. That's exactly the intent of the parties --
20 of the plan proponents. Frankly, it was the intent
21 of the plan proponents that no one waives any rights
22 other than with respect to the plan.

23 Anyway, so my understanding at least, your
24 Honor, is with -- and those two statements, the plan
25 proponents are in agreement, the debtor certainly

1 takes this position it is their intent. And now
2 having stated on the record, I hope that Gunthers,
3 with whatever clarification they want to make, would
4 withdraw their objection.

5 THE COURT: So the settlement of the
6 Class 2 claims would be effective under the plan --

7 MR. CANNON: Yes.

8 THE COURT: -- but not outside the plan?

9 MR. CANNON: That's correct, your Honor.

10 THE COURT: And the second point is that
11 the plan provides for the release of liens, but it's
12 not the plan or the order that would release the
13 liens, it would be the payment of the liens?

14 MR. CANNON: That's correct, pursuant to
15 the plan.

16 THE COURT: All right.

17 MR. JEFFERY L. SHIELDS: Thank you, your
18 Honor. I think Mr. Cannon has accurately stated it.
19 Just so the Court understands, the reason we believe
20 Gunther has a direct claim, even though we don't have
21 a contract with the debtor, is that we did perform
22 work on property of the debtor. Unlike other
23 subcontractors of Jacobsen, my client actually
24 pursued a mechanic's lien action pre-petition against
25 both property of the estate and the fractional

1 interests that were sold to third parties.

2 This is a practical solution. We believe
3 we have the right to be separately classified,
4 separately voted, separately paid. But as a
5 practical matter, we have an agreement with Gunthers
6 on a discounted -- excuse me, agreement with Jacobsen
7 that we will accept a discounted amount.

8 We do withdraw our objection to the plan.
9 We do vote in favor of the plan based on the
10 representations made by Mr. Cannon. I think it is a
11 good practical solution. But in the event this plan
12 doesn't get confirmed or is not effective or we don't
13 get paid, then we don't want this to be a waiver of
14 our rights in any future matters before this Court.

15 Hopefully we won't be here again. We'll
16 be paid and out of the hair of the debtor. That is
17 our -- that is our deal and it is a practical
18 solution that we've negotiated with Mr. Cannon and
19 Jacobsen.

20 THE COURT: All right. Thank you.

21 MR. BLUMENTHAL: In any event, under the
22 plan, WestLB is funding on the effective date
23 approximately three million dollars to pay the
24 Jacobsen/Gunthers claim at the discounted amount of
25 1,330,000. The sixty percent -- the unsecured

1 creditors who have elected, take 60 cents on the
2 dollar. During the voting process, your Honor, on
3 the ballots that were approved by your Honor
4 before -- at the time the disclosure statement was
5 approved, unsecured creditors were given an option of
6 those who voted to elect either to take 60 cents on
7 the dollar on the effective date or receive 100 cents
8 on the dollar in equal quarterly payments over
9 approximately three years.

10 The administration claims, which will
11 aggregate approximately a million dollars by the time
12 we roll into the closing, likewise will be paid with
13 the funding by WestLB.

14 There is a priority claim from the -- the
15 Utah State sales tax, I believe, for 2008 that's
16 somewhere between 185 and \$200,000. When that gets
17 resolved, that likewise will be paid.

18 And the pending payables, which are
19 basically 30-day payables, your Honor, which as of
20 today are approximately 188,000, will be paid in the
21 ordinary course as they flow through in the ordinary
22 business operations of the Sky Lodge.

23 Additionally, WestLB is funding a million
24 five as additional working capital to the reorganized
25 debtor, which is -- the name of which is going to be

1 Heber Avenue, LLC, which is an affiliate of WestLB.

2 Therefore, with the sole exception of
3 Class 6, which is subordinated contractually, every
4 creditor is treated identically, and in some
5 instances somewhat better, from the funding by
6 WestLB.

7 Your Honor, this morning we filed a ballot
8 certification. The ballots, which I signed -- the
9 ballots under the voting procedures were sent to my
10 attention in my office, and as of the close of the
11 voting deadline, which was June 17th, I, along with
12 my paralegal, looked at the ballots, counted them up
13 and the ballot report has been filed.

14 THE COURT: Was that filed electronically,
15 do you know?

16 MR. BLUMENTHAL: Your Honor, if you
17 haven't seen it, I can hand one to you.

18 THE COURT: All right. It doesn't appear
19 to be on the docket, so -- thank you.

20 MR. WILSON: Excuse me, Mr. Blumenthal.

21 THE COURT: It has been filed. It was
22 docketed as an affidavit.

23 MR. BLUMENTHAL: It's a declaration, your
24 Honor.

25 THE COURT: Right. But that's -- so it

1 has been filed.

2 MR. BLUMENTHAL: Right. And as you'll
3 note, the -- now that Gunthers has changed their
4 vote, the summary page summarizes it. And then
5 behind the summary page I have the results in each of
6 the classes. WestLB Class 1 voted to accept. That's
7 a hundred percent number and amount.

8 Now, in Class 2, the two -- which was
9 footnoted that based upon the expected stipulation
10 which was announced, Gunthers would change their vote
11 to yes. So there are now two yes votes, the only two
12 creditors in Class 2, which is a hundred percent
13 number and amount.

14 Class 4, which are the general unsecured
15 creditors, the vote was 24 to 1, and the amounts were
16 99.2 percent in favor, .7 percent rejecting. So that
17 class has accepted.

18 The insider votes, which don't count, your
19 Honor, in Class 4, I separately broke out the insider
20 votes from Class 4 on their general unsecured claims.
21 Even though they don't count for confirmation, the
22 vote was three to one in favor. The amounts were 75
23 percent in favor, 25 percent -- I'm sorry. The
24 amount was 98.8 percent in favor, 1.1 percent
25 against.

1 The only -- then in Class 5, which were
2 the homeowners, all of the homeowners that voted for
3 the plan voted in favor of the plan -- 35 of them.

4 Class 7, as I indicated earlier, voted to
5 accept.

6 And in Class 6, we had -- although they're
7 deemed to reject the plan, what occurred and is
8 reflected on the actual summary of Class 6 is that
9 there were two votes cast for each of Cloud 9 Resorts
10 SL Management and Cloud 9 SL Development. And as
11 your Honor is probably aware, that entity is owned 50
12 percent by Mr. Shoaf's entity, Cloud 9 Resorts,
13 and 50 percent by Mr. Wickline's entity, also --
14 Alchemy Ventures. So the Wickline voted no. Shoaf
15 voted yes. We'll argue that. I have the dates of
16 when the ballots were cast, but they're deemed to
17 reject. In any event, I don't think they get to
18 vote, but I just wanted to disclose how the voting
19 went.

20 Later on in this case we will argue the
21 issues regarding Class 6, which we believe should
22 be -- are contractually subordinated under this plan
23 in light of the fact that WestLB is not getting paid
24 in full. In fact, they have to come up with another
25 four and a half million dollars to fund this plan.

1 I will at some point in this hearing allow
2 Mr. Havel to -- well, it's not for me to allow, but
3 Mr. Havel will address the Court on the contractual
4 subordination issue.

5 In sum, however, we now only have one
6 person voting against the plan. That's
7 Mr. Wickline's entities, who we think shouldn't vote.
8 Every other creditor in this case -- I'm sorry,
9 except for the one \$4,000 unsecured creditor -- has
10 voted overwhelmingly to accept the plan.

11 And just to put it in perspective, we're
12 going to bring Mr. Throndsen back for some very brief
13 testimony, but as your Honor is aware, there's been a
14 valuation set for Easy Street Partners at 20.6
15 million. The claims as they add up before they're
16 settled, so to speak, under the plan aggregate in
17 excess of 22 million without regard to the Cloud 9 SL
18 Management and Development claims.

19 WestLB filed in a declaration of Duncan
20 Robertson -- is it Robertson? I want to get his name
21 correct on the record -- reflecting that their actual
22 claim is 17.9 million. That would calculate all of
23 the attorney's fees and default rate, interest, and
24 other charges that they would be entitled to, absent
25 a settlement under the plan; the declaration of

1 Richard Kirkham, who's Mr. Jacobsen -- who's the
2 principal of Jacobsen, filed a declaration that their
3 claim is slightly in excess of a million 750; the
4 unsecured creditors will introduce a spreadsheet on
5 their claims for approximately \$980,000.

6 As I said, the administration claims were
7 approximately a million, priority claims 200,000, and
8 the payables as of today, administration
9 claims, 188,000. That adds up to in excess of 22
10 million. Therefore, we think it's sort of an easy
11 conclusion that equity Class 7 should get nothing and
12 that the subordination agreement for Class 6 under
13 this plan should be enforced, particularly in light
14 of WestLB contributing an additional four and a half
15 million to make this plan work.

16 We believe the plan addresses and complies
17 with all of the requirements of 1129, is in the best
18 interest of this estate. We'll get into that at
19 closing argument. The evidence will address each of
20 those prongs. We've briefed it. We apologize for
21 getting the brief in late last night. It's been our
22 experience -- at least my experience -- that your
23 Honor actually reads everything that's filed, and I
24 hope we got it to you early -- or late enough not --
25 so you could read it this morning, but we believe it

1 addresses all the elements.

2 Now, the committee reply is somewhat
3 unusual. I think maybe the way to handle that is --
4 and at the end of the evidence we can argue that, but
5 what they're really asserting is that Class 4
6 creditors should be allowed to change their election.
7 The debtor's position is, we're somewhat agnostic on
8 that. However, we feel strongly that creditors who
9 didn't vote should not be allowed to now come in and
10 reelect options. That, frankly, is, I think -- you
11 know, it shouldn't be open. Because the -- everyone
12 was on notice. It's very clear. The voting
13 instructions were that if you didn't vote, you took
14 the option that paid you a hundred cents on the
15 dollar in quarterly installments over time. So they
16 will be receiving a hundred cents nevertheless. It's
17 not for us to get into the minds of people who have
18 never shown up in this court and didn't vote.

19 So irrespective of what Mr. Havel and
20 Mr. Jenkins work out, hopefully throughout the course
21 of this hearing, the debtor believes that they should
22 not actually be allowed. Those who have not voted
23 should not be allowed to now come back in after the
24 fact and make elections. It's sort of like in our
25 system in America if -- you know, I always tell my

1 kids who are now voters that if you don't vote for
2 president, you can't complain about what the
3 president does.

4 THE COURT: Well, are we talking about
5 hypotheticals or are there creditors who haven't
6 voted saying they want to vote?

7 MR. BLUMENTHAL: No one has come in that
8 hasn't voted --

9 THE COURT: Okay.

10 MR. BLUMENTHAL: -- that says they want to
11 re-elect. Nothing's been filed.

12 THE COURT: All right.

13 MR. BLUMENTHAL: Now, the only objections
14 that -- separate and apart from that issue -- I don't
15 really consider that an objection -- are from
16 basically two partners -- two partners up at the
17 Holdings level. When you really cut through the 45
18 pages of the two objections, they're really disputes
19 among partners at the Easy Street Partner level. As
20 your Honor is aware, the corporate structure here is
21 -- I'm sorry, let me correct that. Thank you. It's
22 really a Partner dispute at the Easy Street Holding's
23 level.

24 As your Honor remembers, the debtor before
25 you today, which is the owner of the Sky Lodge

1 operating company, Easy Street Partners, owned a
2 hundred percent by Easy Street Mezzanine, owned a
3 hundred percent by Easy Street Holdings. The equity
4 security holders have either personally or through
5 their entities, their equity interest at the Easy
6 Street Holdings level. That is not before you today.
7 Those cases are still pending before your Honor.
8 There are adversary proceedings where they're named
9 plaintiffs that will go forward before your Honor
10 after today.

11 And, you know, it's our position that
12 these people are -- or persons, as defined under the
13 code -- are totally out of the money, really have no
14 standing in here. And we, frankly, question their
15 motivation in filing these objections today.

16 Their disputes, their disputes among
17 partners don't belong -- at the Holdings level -- do
18 not belong in this courtroom before your Honor. If
19 this plan, for whatever reason, fails today,
20 creditors who are clearly creditors of Easy Street
21 Partners will receive nothing. You'll hear that
22 testimony later. WestLB will receive a fraction of
23 their claim.

24 As we proceed, your Honor, we -- what --
25 what I'd like to do now is talk about proceeding

1 through this hearing. We would put on for very brief
2 testimony Paul Throndsen, who was our appraiser, and
3 then we would put on Bill Shoaf, who's the co-manager
4 of Easy Street Partners. Duncan Robertson filed a
5 declaration on behalf of WestLB. Whether you accept
6 that declaration or need his testimony is something
7 that is up to your Honor.

8 I just -- the order that's been previously
9 entered is in the exhibit book. It's -- it's not
10 necessarily an exhibit. It's an order of this Court
11 on valuation of the 20.6 million.

12 Mr. Throndsen will testify briefly on two
13 areas which would be liquidation value, if we had --
14 if we converted to a seven and had to do a quick sale
15 of his property, as well as the -- some brief
16 testimony which is contained in his supplemental
17 appraisal on feasibility.

18 All of this will reflect that the
19 confirmation requirements of 1129(a) have been
20 complied with and that the cram-down provisions
21 under 1129(b) with respect to Classes 6 and 7 are
22 clearly manifest and proven before your Honor.

23 The -- again, the confirmation brief
24 addresses all of this. We will address all the
25 issues that his Honor wants to hear more about at

1 closing or throughout this case.

2 I would ask you how you would like to
3 proceed. I assume other people will have a few
4 comments before we actually proceed, but I don't know
5 if it's your wish to -- for us to make proffers of
6 their testimony and they can be cross-examined if
7 necessary, or whether you'll require them to actually
8 take the witness stand and testify.

9 THE COURT: "They" being individuals other
10 than --

11 MR. BLUMENTHAL: Mr. Throndsen and
12 Mr. Shoaf and Duncan Robertson. Being -- instead of
13 a proffer, if you'd accept the declaration.

14 UNIDENTIFIED SPEAKER: Yes, for
15 Mr. Robertson. Because we have a declaration with
16 exhibits, we would suggest that his direct testimony
17 could be in the form of submitting the declaration,
18 but we would permit him to do cross if any wish to
19 cross-examine him.

20 THE COURT: All right. Well, why don't we
21 address that as we move forward and see if there are
22 objections to the Court accepting the proffers.

23 Mr. Havel, if you wish to make a statement
24 before we begin, and then I'll hear from the
25 objecting parties perhaps before we begin.

1 MR. HAVEL: Yes, your Honor.

2 My series of comments is really going to
3 be much more of a general overview of the case in the
4 sense of what are the issues right now and where does
5 this case go and the importance of the plan that's
6 before you today.

7 As has been emphasized, and can be and
8 should be reemphasized again, the only objecting
9 parties at this point are people who have really
10 controversies up at a higher level in the corporate
11 structure, and their complaints are really about the
12 alleged mismanagement or non-management either by
13 Mr. Shoaf or by Mr. Wickline or both. There are
14 serious questions of whether they are creditors at
15 all, and certainly the only attenuated potential
16 creditor role is that Mr. Wickline seems to be a
17 member of Skyline Management and Skyline Development,
18 but that management is shared with Mr. Shoaf. So
19 there's really no clear sense that Mr. Wickline even
20 represents that interest.

21 This is a case where the parties have had
22 a substantial amount of time and a substantial amount
23 of opportunities to explore what kind of plan is
24 going to work here, as -- although we're working in
25 the context of a plan that's been on file since

1 January and February, we also know from the series of
2 extensions and delays and plan supplement filings,
3 it's one where the debtor has sought out more than
4 one plan funder, there have been multiple discussions
5 about structuring and alternative financing. This is
6 a project that has been shopped from the investor
7 side extremely carefully and has been monitored very
8 carefully in operations during a very important
9 session.

10 Really, the case started at the beginning
11 of last ski season, September/October. It's gone
12 through a ski season and is going to end hopefully in
13 the summer where we have a small upscale season
14 before we hit the fall when this hotel will again be
15 dark or quiet for a substantial number of months
16 before the next ski season arises. This is clearly a
17 seasonal asset and it's one where the timing for its
18 emergence from the bankruptcy is going to be very
19 important.

20 It's a structured plan where not only has
21 the elements been fully considered, but all the
22 parties have made and are making substantial
23 concessions. The WestLB debt restructure will be
24 revealed to be one that's been carefully and
25 extensively negotiated. It's been structured in a

1 way to ensure feasibility and promote a successful
2 plan. Jacobsen and the mechanic's lienholders are
3 taking a discount to get out of a case when they had
4 substantial claims against their parties, which are
5 also going to be released at this time. The
6 creditors are either taking a note, although it's
7 for -- it's a hundred percent if there's no post
8 petition -- post confirmation interest. And they can
9 take a 60 percent discount to reveal where creditors
10 may see this, so that all of the components here are
11 making sacrifices to make this plan work. And
12 they're all in favor of doing it now.

13 Time is crucial for several, several
14 reasons. The most important one is one that we,
15 WestLB, have been concerned about for months and
16 months. And that is that this debtor has a limited
17 amount of cash available to operate. It started this
18 case with over three million dollars of surplus cash
19 on hand. It's been whittled down to clearly less
20 than \$600,000 as of today. There are several accrued
21 and unpaid professional fee claims that could cut
22 into that even substantially over the next 30 days.
23 If July and August aren't healthy enough, this hotel
24 may not even stay open through the summer, based on
25 the current cash availabilities.

1 Also, failure to confirm this plan and go
2 effective immediately is going to force the owner of
3 this property to lose the visages of the last part of
4 the summer season to sell fractional units. If we
5 can confirm this and go effective in mid or late July
6 there will at least be an August and early September
7 sale opportunity to improve the project's operations.
8 Otherwise, we wait for the ski season.

9 The third problem of delay is cost. One
10 example of the problem about the delay here is we
11 were given in the plan structure and in the plan
12 presentations with other funders that admin claims
13 are going to be \$750,000, and we actually budgeted
14 for that in part of our commitments. As
15 Mr. Blumenthal's already said, he now thinks it may
16 be as high as a million. We have a limited amount of
17 capital that we can put into this company and no
18 more. And a further delay and a further accrual of
19 additional costs could itself destroy any future plan
20 prospects and turn this into an insolvent
21 administration.

22 So we feel a great sense of urgency both
23 because of how much has been done and how far people
24 have gone to make the plan work today and because the
25 prospects of the alternative at this point are very

1 serious.

2 I will defer the discussion about the
3 enforcement of the subordination agreement against
4 the Class 6 claimants and the ability to classify
5 them separately and treat them in the manner that
6 we've had. So that the -- I have no other comments
7 at this point, your Honor.

8 THE COURT: All right. Thank you.

9 MR. JENKINS: Your Honor, Lon Jenkins for
10 the unsecured creditors committee.

11 Just briefly, your Honor, the committee,
12 as your Honor can tell from the pleadings we filed,
13 is supportive of the plan. However, we did file a
14 response, not an objection as such. The response
15 really not going to the merits of the plan, but
16 really to the issue of which, if any, unsecured
17 creditors may have the opportunity to change their
18 elections, not their votes.

19 I've had discussions both with
20 Mr. Blumenthal and Mr. Havel this morning respecting
21 that issue. I expect that during the course of the
22 hearings today and during the break, we will conclude
23 those discussions and reach some agreement as to
24 really the scope of which creditors should or would
25 be able to reelect their option one or option two

1 election.

2 In addition, your Honor, the plan, in
3 essence, does embody a settlement of sorts of the
4 unsecured creditors committee's litigation that was
5 commenced against WestLB back in January. Under the
6 terms of the plan, if the plan is confirmed, that
7 lawsuit will be dismissed with prejudice.

8 In that regard, I do have with me in court
9 today the chair of the committee, Mr. Craig Elliot.
10 And in support of the settlement, such as it is under
11 the terms of the plan, I would like at some
12 appropriate time to offer his testimony -- to proffer
13 his testimony. And, of course, he is in the
14 courtroom and would be available for any
15 cross-examination. We would like, if possible, to
16 take that part of the presentation this morning so
17 that Mr. Elliot doesn't need to sit here all day and
18 hear the proceedings. So we -- we do have that one
19 additional item in addition to the individuals that
20 Mr. Blumenthal indicated would either be proffered or
21 presenting live testimony.

22 THE COURT: All right. Thank you.

23 MR. JENKINS: Thank you, your Honor.

24 THE COURT: Mr. Wilson or Mr. Boley, do
25 you wish to be heard before we proceed with evidence?

1 MR. WILSON: Yes, your Honor. Thank you.

2 I've personally found one tool to be
3 useful, and that's the ownership structures. Does
4 the Court have that? I'm wondering if we may -- I'm
5 happy to either mark it or disperse it, but I find
6 that this is a wonderful time-saving tool as we
7 discuss through the structure. May I suggest that we
8 either mark it or have it generally available to
9 everybody? I believe that would be the one that's
10 attached to the disclosure statement.

11 MR. BLUMENTHAL: We don't mind it being
12 marked as -- not necessarily as evidence, but --

13 THE COURT: Well, is it attached to the
14 disclosure statement?

15 MR. WILSON: I hope so, your Honor. I
16 believe it is. It's -- it's certainly been before
17 the Court. It's down in the pleading somewhere.

18 THE COURT: Okay. Well, if you have a
19 copy and --

20 MR. WILSON: May I just mark it maybe W-1
21 or something like that?

22 THE COURT: All right.

23 MR. BLUMENTHAL: Your Honor, it's just --
24 you asked the question; it's not attached to the
25 disclosure statement, but we don't have a problem

1 with having it marked for whatever reason.

2 THE COURT: Well, I guess -- clearly, it's
3 not evidence because we don't have any foundation.
4 But if it's instructional and helpful to the Court,
5 then --

6 MR. WILSON: I offer it for no other
7 purpose, your Honor.

8 THE COURT: All right.

9 MR. BLUMENTHAL: We don't have a problem
10 with that, your Honor.

11 THE COURT: Okay.

12 MR. WILSON: It's going to -- I promise it
13 will save the sanity of a few of us by the end of the
14 day.

15 THE COURT: As long as it's accurate,
16 maybe.

17 MR. WILSON: I hope it is. And whoever
18 prepared it deserves something, some recognition.

19 May I present -- may I just hand that to
20 the Court?

21 THE COURT: Well, yes, you may.

22 MR. WILSON: All right. Thank you.

23 THE COURT: It has been marked.

24 Do you want to give me another copy that's
25 not --

1 MR. WILSON: No, I want to give you the
2 marked one.

3 THE COURT: Okay.

4 MR. WILSON: May I?

5 THE COURT: All right.

6 MR. WILSON: Thank you, your Honor.

7 I'm here -- thank you -- for objecting
8 parties, David Wickline and Cloud 9 Resorts-Sky Lodge
9 Development, LLC and Cloud 9 Resorts-Sky Lodge
10 Devel-- or, Management, LLC, who are scheduled
11 creditors. And I stand here as counsel for Alchemy
12 Ventures Trust, LLC who controls 50 percent of those
13 two entities, which I would like to identify as
14 Development and Management.

15 May I -- let me just take a moment, if I
16 may, by referring to this ownership structure. The
17 debtor, whose plan -- also joined in by WestLB -- is
18 Easy Street Partners, LLC, that I believe to be the
19 owner of the real estate -- the dirt -- which is the
20 hotel facility. It is a wholly-owned entity of Easy
21 Street Mezzanine, which is a wholly-owned entity of
22 Easy Street Holdings, LLC. Each of those two
23 entities are debtors before the Court, but not
24 proponents of the plan.

25 Easy Street Holdings, LLC is owned by --

1 there are really four ownership components. One is
2 on the far right, Cloud 9 Resorts, LLC, which is
3 controlled 100 percent by Mr. William Shoaf. That
4 represents a 38.75 percent equity ownership of
5 Holdings, which is the effective -- 38.75 percent
6 ownership of the venture -- the Easy Street venture.

7 Next, to the left of that is a box
8 representing ownership of an additional 38.75 percent
9 that is owned by Alchemy Ventures Group, LLC. And
10 that -- the member is Alchemy Ventures Trust, owned
11 and controlled 100 percent by David Wickline. So
12 that part of the structure represents two components
13 of 38.75 percent interest.

14 Going to the left, there's Utah Coal and
15 Lumber, ten percent owner of equity. And lastly, to
16 the left of that, is Park City I, LLC, which is
17 Mr. Boley's client, representing 12.5 percent
18 ownership.

19 May I call the Court's attention then to
20 the bottom of the box -- or the bottom of the exhibit
21 where it says, "Sky Lodge Park City, Utah," and
22 emanating on the right is an entity Cloud 9
23 Resorts-Sky Lodge Development, which is separately
24 owned by Cloud 9 Resorts, which is owned by
25 Mr. Shoaf. So that's 50 percent of the marbles. And

1 the other 50 percent is owned by Alchemy Ventures
2 Trust, controlled by Mr. David Wickline, not debtors.
3 That entity is not a debtor. It had a contract with
4 the debtor or debtors to perform certain services.
5 So not a debtor and -- but rather a claimant.

6 Development holds a scheduled claim, not
7 contested, not contingent, not disputed --

8 THE COURT: Who holds a scheduled claim?

9 MR. WILSON: This is Development.

10 THE COURT: Okay.

11 MR. WILSON: And -- and if -- if everybody
12 will go with this, I think from -- from here on out,
13 I would like to identify that particular entity,
14 Cloud 9 Resorts-Sky Lodge Development, as just plain
15 old Development. Again, it holds a scheduled, not
16 disputed, not contingent claim of \$1,268,213. So as
17 I stand here, I stand here as a -- a rejecting
18 creditor of Development as to that claim. There is
19 an accepting ballot to that as well, apparently, from
20 the tabulation that was made. Mr. Wickline, through
21 his entity, which holds 50 percent of that claim --
22 effective 50 percent -- has voted to reject
23 Mr. Shoaf, who holds the other 50 percent votes to
24 accept.

25 Are we okay so far?

1 THE COURT: Yes.

2 MR. WILSON: Good. Let's go just -- then
3 I'm about through with this little -- this little
4 experiment.

5 To the left then of -- of the bottom of
6 this exhibit is another entity called Cloud 9
7 Resorts-Sky Lodge Management. The ownership of that
8 and the control of that and the structure of it and
9 its function is a mirror image of Development, and it
10 holds an -- a scheduled, undisputed, not contingent,
11 and not unliquidated claim of \$366,631.39. And
12 ballots have been apparently cast voting to both
13 accept and reject. Those two claim aggregate,
14 \$1,634,844.

15 In the former plan that was amended and
16 dressed up and submitted to the Court for
17 confirmation today on a very, very short string,
18 those claims formerly were to be paid, not
19 subordinated. They were to be paid. The treatment
20 was disparate from the other unsecured claims. But
21 nonetheless, they were to be paid in full.

22 Then we had this little hurry-up
23 experiment on -- on a brand-new plan with a -- with a
24 joining plan proponent and -- and the treatment is
25 radically different. And that is these claims are to

1 be subordinated, not paid a penny and, in fact, have
2 been relegated to a new Class 6, which does not even
3 contemplate that they would be allowed to vote and
4 participate in the plan. I hope that lays a little
5 background for this. In addition, Mr. Wickline holds
6 a likewise claim of about \$4,600 unsecured claim in
7 his own right.

8 The -- if I may refer just one more time
9 to this organizational chart exhibit. This will be
10 about my -- this is kind of my last one -- is if the
11 Court would look at the top box, "Debtor: Easy
12 Street Holding," it will see a line immediately above
13 that to an entity called ABG-SL, LLC. In former
14 times, that was the manager of Easy Street Holding,
15 which, of course, made it the effective manager of
16 the Easy Street venture. Ownership and control of
17 ABG-SL, LLC was in two members: Alchemy Ventures
18 Trust, owned 100 percent by David Wickline; Cloud 9
19 Resorts, owned 100 percent by William Shoaf, thereby
20 making them each 50 percent members and 50 percent
21 managers of that venture.

22 In August of 2009 Easy Street Holdings
23 conducted a meeting and voted to discontinue the
24 services or discharge the services of ABG-SL, LLC as
25 manager. That effort was led by Mr. Shoaf. And when

1 ABG-SL, LLC was removed as manager, I believe the
2 evidence will show that Mr. Shoaf, and perhaps
3 others, substituted themselves personally as
4 managers. And at that point in time, Mr. Wickline
5 was effectively removed from management or
6 involvement. I believe the evidence will show that
7 there was no consultation with Mr. Wickline or his
8 interests with regard to the bankruptcy filing or any
9 management activities occurring after that time.

10 The -- and I'm just really almost through
11 kind of outlining our -- our opening with regard to
12 the -- the objection.

13 Mr. Shoaf has continued as manager, and is
14 manager today, of, as I understand it, of the debtor
15 who seeks confirmation today. So he has effectively
16 moved forward without consultation of 38 and
17 three-quarters percent of the equity of the venture
18 throughout.

19 We will show to the Court through evidence
20 and upon argument that Mr. Shoaf has, while
21 participating in an effort to disenfranchise -- by
22 participating in the formulation and filing of this
23 plan -- to disenfranchise \$1,600,000 worth of
24 legitimate claims of which he himself would
25 participate in half, that the deal that he has cut is

1 that he's going to get it -- he's going to get his
2 half anyway through an employment contract and
3 through an interesting provision with regard to
4 assistance in the transferring of liquor licenses,
5 which we submit have been misappropriated by him and
6 is being used in this case for his personal gain, and
7 that the compensation which is contemplated will be
8 his personally under this new plan is \$720,000 in
9 cold cash, plus an opportunity for some commissions
10 and other things. So basically he gets his half of
11 the -- of the development and management claims
12 through the back door. And what we submit that boils
13 down to is a plan that is not submitted in good
14 faith.

15 We'll have some -- the mechanism for
16 disenfranchising that million-six is the
17 subordination agreement issues raised by WestLB, and
18 I'm sure there will be some legal discussion about
19 that.

20 I hope that has at least been practically
21 helpful to the Court in framing the issues. Thank
22 you.

23 THE COURT: It has. Thank you.

24 MR. BLUMENTHAL: Your Honor, obviously
25 this is an opening statement; it's not evidence,

1 Mr. Wilson's not testifying, and I want you at the
2 end of the hearing to think if anything he said has
3 actually proven by evidence.

4 THE COURT: All right.

5 MR. WILSON: He doesn't ever buy anything
6 I say.

7 MR. BOLEY: Your Honor, Matthew Boley
8 appearing on behalf of Park City I, LLC.

9 It's been my experience that this Court
10 does read papers, and I think ours were in long
11 enough ago that you're probably familiar with our
12 objection. So let me summarize just a few key points
13 that might be helpful to the Court as it considers
14 the evidence today.

15 And I would start with the very words used
16 by the debtor's counsel as he started his opening
17 statement, which were this -- I wrote them down --
18 "This is basically the same plan with a major
19 exception."

20 Therein lies the rub, your Honor. This is
21 not the same plan that was proposed months ago for
22 which there is an approved disclosure statement on
23 which creditors voted, voting closing the day after
24 this new plan was filed.

25 In this case, the major exception swallows

1 the plan. And there are several problems, your
2 Honor. One is that from my client's perspective,
3 WestLB was the architect and the cause of the
4 debtor's demise. Under the former plan, and as
5 described in the disclosure statement, the creditor's
6 committee on behalf of creditors and the estates were
7 going to -- was going to pursue causes of action
8 against WestLB. That is something that all creditors
9 who got to vote on this plan had in mind when they
10 voted on -- or chose not to vote on the plan. Now
11 WestLB is receiving a release of any and all claims
12 and a release of that litigation.

13 Conspicuously absent in the existing
14 approved disclosure statement is any discussion of
15 the kind of factors that this Court would want to see
16 in a disclosure statement where claims of this nature
17 are being settled, discussion of the Copexa factors.
18 So the disclosure statement is wholly inadequate for
19 the plan before the Court.

20 The way this has come up procedurally, the
21 debtor and WestLB are putting the cart before the
22 horse. They're asking the Court to approve a plan
23 based on votes for a different plan and a disclosure
24 statement for a different plan.

25 As just one illustration of this, your

1 Honor, I would point out that even the unsecured
2 creditors committee, although not objecting, have a
3 problem with the adequacy of the original disclosure
4 statement. And you notice that the committee's
5 objection is that those who made a certain election
6 or chose not to vote, knowing that that would be a
7 deemed election, had inadequate information to make
8 that election because their treatment under this new
9 plan is different and because the feasibility of this
10 plan, given the different dollar amounts that are
11 being contributed, are different. So even as to
12 those unsecured creditors who -- and I -- the
13 committee's in favor of the plan and wants now to
14 settle this litigation. So even as to them, the
15 original disclosure statement was not adequate to
16 address to them which election they should make.

17 Your Honor, I'll reserve the remainder of
18 my comments for closing.

19 THE COURT: Well, Mr. Boley, how is the
20 impact on your client under the old plan and the
21 amended plan different?

22 MR. BOLEY: The impact, your Honor, is
23 that under the old plan with litigation against
24 WestLB and with the possibility of success in that
25 litigation either disallowing or subordinating that

1 claim, perhaps with an affirmative dollar recovery
2 from WestLB, my client, although only a creditor and
3 equity holder at the Holdings level, did have a
4 possibility of some recovery.

5 Now, with that litigation settled without
6 information or evidence that would satisfy the Copexa
7 factors, my client is absolutely denied any -- any
8 chance of recovery in this case.

9 THE COURT: But your client does
10 understand the differences in the two plans and --
11 with respect to the effect it has on your client?

12 MR. BOLEY: The --

13 THE COURT: What I'm getting at,
14 Mr. Boley, is one of the objections you raised was
15 the notice requirements and that proper notice of
16 this confirmation hearing and the plan before the
17 Court today hasn't been given and that the Court can
18 change -- otherwise order and find notice
19 requirements sufficient.

20 So my question really goes to whether your
21 client is prejudiced by the Court considering this
22 plan or whether you're just saying technically they
23 haven't done what they're supposed to do.

24 MR. BOLEY: I think both, your Honor. I
25 think it's clear they've technically not done what

1 they're supposed to do. And although I and my
2 partners at Parsons, Kinghorn, Harris consider
3 ourselves to be quick studies, I don't know that we
4 have yet figured out all the differences in how this
5 plan treats our client and how the old plan did.
6 Personally, I don't know --

7 THE COURT: Well, under this plan, it's
8 pretty clear you don't get anything.

9 MR. BOLEY: That's certain. It's certain
10 that this plan is much worse for my client.

11 THE COURT: Okay. All right. Thank you.

12 MR. BOLEY: Thank you, your Honor.

13 THE COURT: All right. Mr. Shoaf, I guess
14 we're ready to proceed. I'm going to need to take a
15 recess at 11:45 and then we can recommence at 1:15.

16 MR. BLUMENTHAL: Okay. I'm sorry, you're
17 going to break at eleven --

18 THE COURT: Right. Break -- oh, no, I'm
19 going to --

20 MR. BLUMENTHAL: We would put
21 Mr. Throndsen on first so he doesn't have to stay
22 here all day.

23 THE COURT: All right. That would be
24 fine.

25 Mr. Throndsen?

1 MR. BLUMENTHAL: And my question for
2 Mr. Throndsen is, would the Court entertain a proffer
3 of his testimony, which would be brief or would you
4 want him to actually testify?

5 THE COURT: Well, it would seem to make
6 sense to -- for -- just to speed this along, to
7 accept the proffer. Certainly parties can have an
8 opportunity to cross-examine.

9 So you -- why don't you go ahead and have
10 a seat for a minute, Mr. Throndsen, and we'll see
11 where we go.

12 MR. BLUMENTHAL: Your Honor, I would first
13 point to, in your exhibit book, to Exhibit 1-A. You
14 know, it's not actually -- I don't think it's
15 actually -- it's an order of this Court dated
16 April 15th, which at an April 14th hearing valued the
17 assets of Easy Street Partners, the Sky Lodge, a
18 combination of the commercial and the residential
19 units, at 26.6 million.

20 I would ask -- I mean, technically it's an
21 order of the Court. It's part of the record. That
22 hearing was done in connection with the valuation
23 hearing. We bifurcated that from a confirmation
24 hearing. I would just ask that it be marked, and I
25 think the Court can take judicial notice of its own